Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), pursuant to section 38;
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was assisted by property manager LZ. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

Preliminary Issue – Service

The landlord applied on January 25, 2021 for an authorization for substitute service: "I have attempted to give or served the documents in person, but the tenant has left with no forwarding address and does not answer to my calls". On January 29, 2021 the landlord was authorized to serve the application and evidence (the materials) by email.

The landlord affirmed she served the materials by email on February 02, 2021. The tenant confirmed receipt of the materials on February 02, 2021. I accept the landlord was sufficiently served the materials in accordance with section 71(2)(C) and the decision dated January 29, 2021.

The tenant stated he served his response evidence by email. The tenant could not inform when he sent the email. The landlord said she did not receive an email from the tenant with evidence.

The tenant did not provide a copy of the email and was not able to inform when he sent the email with his response evidence. I find the tenant failed to prove he served his response evidence. Thus, I do not accept the tenant's response evidence.

The tenant testified he emailed the landlord new evidence on the date of the hearing.

Rule of Procedure 3.15 States:

> Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package. […] the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The second evidence package served on the hearing date is excluded, per Rule of Procedure 3.15.

Preliminary Issue – Request to Amend the Application

At the hearing the landlord stated she inspected the rental unit on May 25, 2021 and learned that the tenant damaged the door. The landlord requested to amend the application to be compensated for the damaged door.

Residential Tenancy Branch Rules of Procedure Rule 4.2 provides

> In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find the landlord's request could not be reasonably anticipated by the tenant, as the landlord could have inspected the rental unit earlier and requested an amendment per Rule of Procedure 4.1. As such, I deny the landlord's request to amend the application at the hearing.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the tenant's deposit?
4. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the periodic tenancy started on June 22, 2016 and ended on January 15, 2021. Monthly rent was $2,286.00, due on the first day of the month. At the outset of the tenancy a security deposit of $1,100.00 was collected and the landlord holds it in trust. The parties did not conduct a move out inspection.

The landlord submitted into evidence the form K, signed only by the landlord. The tenant affirmed he believes he also signed this form. It states:

> 1. Under the *Strata Property Act,* a tenant in a Strata Corporation **must** comply with the bylaws and rules of the Strata Corporation that are in force from time to time (current bylaws and rules attached).
>
> 2. The current bylaws and rules may be changed by the strata corporation, and if they are changed, the tenant **must** comply with the changed bylaws and rules.
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> 3. If a tenant or occupant of the strata lot, or a person visiting the tenant or admitted by the tenant for any reason, contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines, denial of access to recreational facilities, and if the strata corporation incurs costs for remedying a contravention, payment of those costs.

The landlord affirmed she did not receive the tenant's forwarding address. The tenant affirmed he emailed his forwarding address in January, February, March 2021 and on the date of the hearing. The tenant confirmed his forwarding address during the hearing (mentioned on the cover page of this decision).

Property manager LZ affirmed she informed the tenant by email in November 2020 that the landlord may want him to move out of the rental unit. The tenant affirmed the November 2020 email said: "Landlord wants you to move out in 60 days". The tenant affirmed he moved out on January 15, 2021 because that was the date he was told to move out and he did not serve a tenant's notice to end tenancy. Both parties agreed the landlord did not serve a notice to end tenancy.

The landlord is claiming for January and February 2021 rent in the amount of $4,572.00 (2 x $2,286.00) because the tenant did not pay rent in January and did not give notice to end tenancy 30 days prior to the end of the tenancy. The tenant affirmed he did not pay January 2021 rent because he moved out of the rental unit on the day the landlord instructed him to move out and the deposit was not returned.

The landlord is claiming for compensation in the amount of $62.16 for the electricity bill due on January 08, 2021. The bill was submitted into evidence. The tenant agreed to pay this amount.

The landlord is claiming for compensation in the amount of $300.00 for cleaning expenses. The landlord affirmed the tenant did not clean the rental unit when the tenancy ended and the landlord estimates she will pay $300.00 to clean the rental unit. The tenant affirmed he cleaned the rental unit when the tenancy ended.

The landlord is seeking for compensation in the amount of $800.00 for four strata fines of $200.00. The landlord submitted into evidence four letters sent by the strata between September 22, 2020 and January 18, 2021 about noise and smoking bylaw contraventions. The landlord submitted a bank statement indicating the payment of strata fines of $200.00 on December 07, 2020 (noise), November 23, 2020 (noise) and October 07, 2020 (smocking). On October 01, 2020 the landlord emailed the tenant: "Have you dealt with this bylaw violation? Please let me know of the outcome."

The tenant affirmed he is aware of the four strata fines, but he is not responsible for them, as he did not smoke and no unreasonable noise emanated from the rental unit. The tenant affirmed there is a neighbour on the rental unit's floor that submits fake complaints. The tenant affirmed he appealed the fines, but the strata confirmed them.

On January 21, 2021 the landlord emailed the tenant:

> Your hydro is $62.16 please manage your payment soon!
> You got another fine for smoking, so I think you'd better find higher level of property management to clarify yourself right away, otherwise you have to pay lots of money plus last few times.

The tenant replied on the same date: "As per my last email I have left the keys with concierge and vacated the apartment. Thank you".

The landlord is claiming for the total amount of $5,734.16.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Forwarding address

The parties offered conflicting testimony about service of the forwarding address. The tenant's testimony about service of the forwarding address was vague. The tenant did not provide any documentary evidence to support his claim that he served the forwarding address in January, February, March 2021 and on the date of the hearing. Thus, I find the tenant failed to prove, on a balance of probabilities, that he served the forwarding address.

The tenant informed the forwarding address during the hearing. Section 71(2)(b) of the Act states the director may order that:

> (2)In addition to the authority under subsection (1), the director may make any of the following orders:
> […]
> (b)that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

Per section 71(2)(b) of the Act, I order that the landlord is sufficiently served the tenant's forwarding address three days after the date of this decision.

Unpaid rent

I accept both parties' uncontested testimony that the landlord did not serve a notice to end tenancy.

Section 44(1) of the Act states:

> **(1)A tenancy ends only if one or more of the following applies:**
> **(a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:**
> (i)section 45 [tenant's notice];
> (i.1)section 45.1 [tenant's notice: family violence or long-term care];
> (ii)section 46 [landlord's notice: non-payment of rent];
> (iii)section 47 [landlord's notice: cause];
> (iv)section 48 [landlord's notice: end of employment];
> (v)section 49 [landlord's notice: landlord's use of property];
> (vi)section 49.1 [landlord's notice: tenant ceases to qualify];
> (vii)section 50 [tenant may end tenancy early];

> (b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
> **(c)the landlord and tenant agree in writing to end the tenancy;**
> (d)the tenant vacates or abandons the rental unit;
> (e)the tenancy agreement is frustrated;
> (f)the director orders that the tenancy is ended;
> (g)the tenancy agreement is a sublease agreement.
>
> **(emphasis added)**

Section 52 of the Act states:

> In order to be effective, a notice to end a tenancy must be in writing and must:
> […]
> (e)when given by a landlord, be in the approved form.

Per section 52 of the Act, an email from the landlord instructing the tenant to move out does not comply with section 44 of the Act. The parties did not agree in writing to end the tenancy.

I accept the tenant's uncontested testimony that he did not provide a one month notice to end tenancy, as required by section 45(1) of the Act:

> (1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
> (a)is not earlier than one month after the date the landlord receives the notice, and
> (b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Per section 45(1) of the Act, the tenant must pay February 2021 rent.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement:

> A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept both parties' uncontested testimony that the tenancy agreement requires the tenant to pay monthly rent of $2,286.00 on the first day of the month and the tenant did not pay January and February 2021 rent.

As such, I award the landlord $4,572.00 for January and February 2021 rent.

Electricity bill

The tenant agreed to pay the amount of $62.16 for the electricity bill due on January 08, 2021.

As such, I award the landlord the amount of $62.16.

Cleaning expenses

The parties offered conflicting testimony about the rental unit's cleaning when the tenancy ended. The landlord did not provide any documentary evidence to support her claim that the tenant did not clean the rental unit.

Thus, I find the landlord failed to prove, on a balance of probabilities, that the tenant failed to comply with the Act of the tenancy agreement.

As such, I dismiss the landlord's claim for compensation for cleaning expenses.

Strata fines

Based on the tenant's testimony, I find the tenant signed the form K.

Section 1 of the Act states:

> "tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

I find the form K is an amendment to the tenancy agreement, per section 1 of the Act.

Based on the landlord's convincing testimony, the bank statement, the strata letters, the emails dated October 01, 2020 and January 21, 2021, I find the tenant breached section 3 of form K by not paying four strata fines and the landlord incurred a loss in the amount of $800.00. The tenant appealed the fines, but they were confirmed by the strata.

As such, I award the landlord $800.00 in compensation for this loss.

Deposit

Section 38(1) of the Act requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

As the tenant did not serve the forwarding address, the timeframe of section 38(1) has not started.

Section 72(2)(b) of the Act states:

> (2)If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
> […]
> (b)in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Thus, I order the landlord to retain the tenant's deposit of $1,100.00 in partial satisfaction of the monetary award granted.

Filing fee and summary

As the landlord was successful in this application, the landlord is entitled to recover the $100.00 filing fee.

In summary:

Item	**Amount $**
January and February 2021 rent ($2,286.00 per month)	4,572.00
Electricity bill	62.16
Strata fines	800.00
Filing fee	100.00
Subtotal	5,534.16
Minus deposit	1,100 (subtract)
Total	**4,434.16**

Conclusion

Pursuant to sections 26, 67 and 72 of the Act, I authorize the landlord to retain the $1,100.00 deposit and grant the landlord a monetary order in the amount of $4,434.16.

The landlord is provided with this order in the above terms and the tenant must be served with this order in accordance with the Act. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 01, 2021

Residential Tenancy Branch